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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

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Bar # 44971

Case Number(s):

- 10-O-06759
- 11-O-10455
- 11-O-10556
- 11-O-11136
- 11-O-11741
- 11-O-14158
- 11-O-15880
- 11-O-16304
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- 12-O-10847
- 12-O-10796
- 12-O-11530
- 12-O-10766
- 11-O-19513
- 12-O-12462
- 12-O-12543

For Court use only

PUBLIC MATTER

FILED

MAY 22 2012

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

Submitted to: **Settlement Judge**

In the Matter of:
Vivian San Jose

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND
DISPOSITION AND ORDER APPROVING

Bar # 222909

ACTUAL SUSPENSION

A Member of the State Bar of California
(Respondent)

PREVIOUS STIPULATION REJECTED



Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 2, 2002.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 21 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: 2013, 2014, 2015, and 2016. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
 - (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.

- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See Attachment, page 13, "Aggravating Circumstances"
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See Attachment, page 13, "Aggravating Circumstances"
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious. See Attachment, page 14, "Mitigating Circumstances"
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. See Attachment, page 14, "Mitigating Circumstances"
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.

- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of four years.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**
- Respondent must be placed on probation for a period of four years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) **Actual Suspension:**
- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of three years.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

No Ethics School recommended. Reason: .

- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions
 - Law Office Management Conditions
 - Medical Conditions
 - Financial Conditions

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
 - No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Vivian C. San Jose

CASE NUMBERS: 10-O-06759; 11-O-10455; 11-O-10556; 11-O-11136; 11-O-11741; 11-O-14158;
 11-O-15880; 11-O-16304; 11-O-16575; 11-O-16686; 11-O-16905; 11-O-16981;
 11-O-17406; 11-O-17522; 11-O-17624; 11-O-17637; 11-O-17685; 11-O-17782;
 11-O-19671; 12-O-10072; 12-O-10105; 12-O-10814; 12-O-10846; 12-O-10847;
 12-O-10796 ; 12-O-11530;12-O-10766; 11-O-19513; 12-O-12462; 12-O-12543

FACTS AND CONCLUSIONS OF LAW:

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

CASE NUMBER: 10-O-06759

FACTS:

1. On June 13, 2006, Arturo Santiago employed Respondent to represent him in a civil matter relating to an investment into which Santiago had entered. Respondent represented Santiago in this civil matter until August 10, 2006, when Respondent terminated the representation.
2. On July 27, 2006, Respondent borrowed \$25,000 from Santiago and signed a promissory note memorializing the terms of the transaction. Under the terms of the promissory note, Respondent was to pay interest on the loan in the sum of \$5,000 if the loan was repaid on September 30, 2006, with additional interest to accrue at the rate of \$1,000 every month thereafter.
3. Respondent did not advise Santiago in writing that Santiago had the right to seek the advice of an independent lawyer of Santiago's choice, nor did Respondent provide Santiago a reasonable opportunity to seek that advice.

CONCLUSION OF LAW:

4. By not advising Santiago in writing that Santiago had the right to seek the advice of an independent lawyer of Santiago's choice, and by not providing Santiago a reasonable

opportunity to seek that advice, Respondent entered into a business transaction with a client without complying with the requirements that: the client was advised in writing that the client may seek the advice of an independent lawyer of the client's choice; the client was given a reasonable opportunity to seek that advice; and the client thereafter consented in writing to the terms of the transaction or acquisition, in willful violation of Rules of Professional Conduct, rule 3-300.

CASE NUMBERS: 11-O-10455; 11-O-10556; 11-O-11136; 11-O-11741; 11-O-14158;
11-O-15880; 11-O-16304; 11-O-16575; 11-O-16686; 11-O-16905;
11-O-16981; 11-O-17406; 11-O-17522; 11-O-17637; 11-O-17685;
11-O-17782; 11-O-19513; 12-O-10072; 12-O-10105; 12-O-10814;
12-O-10846; 12-O-12462; 12-O-12543

FACTS:

5. Between February 26, 2010, and May 20, 2011, all of the clients listed below employed Respondent to represent them to negotiate and obtain for them modifications of their home mortgage loans.
6. From February 26, 2010, until May 20, 2011, Respondent charged and received advanced fees for home mortgage loan modification services, in all of the above-listed matters, before Respondent had completed all the services described in the legal services agreement with her clients.
7. In none of the above-listed matters did Respondent complete the services described in Respondent's legal services agreement, before charging and collecting fees.
8. The following are the clients who Respondent charged advanced fees for home mortgage loan modification services, and from whom Respondent received advanced fees for home mortgage loan modification services, the amounts of their advanced fees, and the dates they paid those fees:

Case Number	Client	Retainer Fee	Date Paid
11-O-10455	Maria Nieto	\$1,500	2/26/10

		\$1,800	3/31/10
11-O-10556	Isaias and Teresa Sepulveda	\$1,000	6/19/10
11-O-11136	Maribel Jimenez	\$500	5/06/10
		\$1,000	5/20/10
		\$1,000	6/15/10
		\$1,000	7/05/10
11-O-11741	Maudie Molleda	\$250	8/10/10
		\$1,600	9/3/10
		\$1,650	10/3/10
11-O-14158	Wilber Cornejo	\$1,000	6/16/10
		\$1,500	7/16/10
11-O-15880	Mirtha Godoy	\$750	11/29/10
11-O-16304	Sonia Torres	\$1,200	11/5/10
		\$892.50	11/20/10
		\$892.50	12/5/10
11-O-16575	Lupe Reynoso	\$500	7/27/10
		\$1,500	8/3/10
		\$1,500	8/10/10
11-O-16686	Thomas Carranco	\$1,800	6/15/10
		\$1,700	6/30/10
		\$3,500	7/30/10
11-O-16905	Juan Rojas	\$1,333	3/9/11
		\$1,333	4/5/11
		\$1,333	5/6/11
11-O-16981	Maria Huitron	\$4,000	3/5/11
		\$3,000	3/10/11
		\$1,495	5/20/11
11-O-17406	Ramon and Cristina Zavala	\$3,500	7/17/10
11-O-17522	Jose F. Lopez	\$200	1/20/11
		\$1,033	1/22/11
		\$1,333	2/16/2011
		\$1,333	3/20/11

11-O-17637	Pedro and Valentin Palacios	\$1,500	10/18/10
		\$1,485	11/10/10
		\$195	1/9/11
11-O-17685	Martin Pena	\$2,500	4/1/11
		\$1,500	4/24/11
11-O-17782	Pedro and Socorro Cruz	\$2,000	1/26/11
11-O-19513	Victor and Maria Lira	\$1,000	2/18/11
		\$1,359	3/3/11
		\$500	3/8/11
12-O-10072	Ana Magana	\$2,000	2/26/11
12-O-10105	Israel Calderon	\$3,000	3/22/10
		\$2,400	4/22/10
		\$1,600	5/22/10
12-O-10814	Eugenio Rios	\$6,250	8/6/10
12-O-10846	Maria Barraza	\$1,995	3/23/10
		\$1,300	4/23/10
		\$299	9/15/11
12-O-12462	Luz Padilla	\$1,000	3/29/11
		\$1,000	4/15/11
		\$1,000	5/5/11
12-O-12543	Gutierrez	\$2,000	2/16/11

CONCLUSIONS OF LAW:

9. By charging and receiving advanced fees after October 11, 2009 in exchange for agreeing to perform loan modification services in violation of California Civil Code section 2944.7(a)(1), Respondent willfully violated Business and Professions Code section 6106.3.

FACTS:

10. In April 2010, Respondent met Akemi Roca and Miguel Ciccía, two non-lawyers who offered to provide Respondent attorney support services from an office in Fresno. From April 2010 until November 2010, Respondent employed Roca and Ciccía to market Respondent's bankruptcy services and sign bankruptcy representation engagement agreements between Respondent and bankruptcy clients. Roca and Ciccía, with Respondent's authorization, ran advertisements on Fresno Spanish language radio stations advertising Respondent's bankruptcy services.
11. With Respondent's authorization, Roca and Ciccía determined what to charge each client, an act which constitutes the practice of law. Respondent compensated Roca and Ciccía by paying each of them a percentage of the client's fee. Roca and Ciccía also provided "credit counseling" to the clients they signed up, collected the documents necessary for each bankruptcy petition, and scheduled meetings between the clients and Respondent on those occasions when Respondent traveled to Fresno for hearings in bankruptcy court. Respondent's office in Corona was approximately 275 miles from Fresno. Respondent made less than 6 visits to Roca and Ciccía's Fresno office between April 2010 and November 2010. Respondent exercised virtually no supervision over the activities of Roca and Ciccía, but instead delegated almost complete control over these bankruptcy cases to non-lawyers Roca and Ciccía.
12. All of the clients who employed Respondent for bankruptcy representation paid advanced fees, no portions of which were earned by Respondent, as Respondent performed no legal services of any value to the clients.
13. In November 2010, Respondent was informed by several of her bankruptcy clients that Roca and Ciccía had been treating the clients rudely. Respondent thereupon directed Roca and Ciccía to stop signing up new bankruptcy clients for her and to wind down their employment by the end of December 2010. The only remaining duty Respondent directed Roca and Ciccía to

perform from November 2010 until December 31, 2010, was the receipt of installment fee payments from existing bankruptcy clients.

14. In September 2011, Respondent became aware that Roca and Ciccina had been continuing to sign up new clients using Respondent's bankruptcy engagement agreement, and had deposited those clients' fees into their own accounts. Respondent reported Roca and Ciccina to the Bakersfield and Fresno police departments.

15. The following are the clients who employed Respondent to prepare bankruptcy petitions, the amounts of their advanced fees, and the dates they paid those fees, no portions of which were earned by Respondent:

Case Number	CW	Retainer Fee	Date Paid
11-O-17624	Anna Maria Moreno	\$500	1/11/11
		\$500	1/20/11
		\$600	1/28/11
		\$339	6/30/11
11-O-19671	Jose Lopez	\$100	6/29/11
		\$1,700	7/29/11
12-O-10766	Jose Barrera	\$500	5/13/11
		\$1,039	6/6/11
12-O-10796	Oscar Alvarez	\$800	6/7/11
		\$575	7/7/11
		\$675	8/7/11
12-O-10847	Angel Nanez	\$100	4/22/11
		\$1,900	4/29/11
		\$360	8/8/11
12-O-11530	Elizabeth Santibanez	\$200	7/18/11
		\$600	7/23/11
		\$600	7/26/11
		\$359	7/29/11

CONCLUSIONS OF LAW:

By failing to perform any legal services of value to the above-listed clients, Respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

By creating a bankruptcy practice in conjunction with non-lawyers Roca and Ciccia without adequate controls, and without adequate supervision of the non-lawyers' conduct of the practice over an extended period, Respondent acted with gross negligence amounting to moral turpitude, in willful violation of Business and Professions Code, section 6106.

By compensating Roca and Ciccia for signing up new bankruptcy clients from their Fresno office, Respondent compensated, gave, or promised something of value to a person or entity for the purpose of recommending or securing employment of Respondent or Respondent's law firm by a client or as a reward for having made a recommendation resulting in such employment, in willful violation of Rules of Professional Conduct, rule 1-320(B).

By authorizing Roca and Ciccia to determine the amount of the attorneys' fee to charge each bankruptcy client, Respondent aided a person or entity in the unauthorized practice of law, in willful violation of Rules of Professional Conduct, rule 1-300(A).

By not providing a refund of unearned advanced fees to the above-listed clients, Respondent willfully failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

AGGRAVATING CIRCUMSTANCES.

Harm (Standard 1.2(b)(iv)): Respondent's bankruptcy clients were harmed by Respondent's failure to provide any legal services of value to them and by Respondent's delegation of almost complete control of these cases to non-lawyers Roca and Ciccia.

Multiple/Pattern of Misconduct (Standard 1.2(b)(ii)): Respondent's failures to perform in all these client matters demonstrates a pattern of misconduct.

MITIGATING CIRCUMSTANCES.

No Prior State Bar Discipline (Standard 1.2(e)(i)): Respondent was admitted to the State Bar on December 2, 2002, and has no prior record of State Bar discipline. Standard 1.2(e)(i) has been applied to give an attorney some mitigating credit for no prior discipline even where the underlying misconduct is found to be serious or significant. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, ft. 13).

Candor/Cooperation (Standard 1.2(e)(v)): Respondent and her counsel met with a State Bar investigator and a Senior Trial Counsel to discuss the allegations against her at a very early stage of these investigations, and has agreed to settle this matter at an early stage in the disciplinary proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.3 of the Standards for Attorney Sanctions provides that “culpability of a member of an act of moral turpitude... shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member’s acts within the practice of law.”

The facts and circumstances in the matters resolved by this stipulation are analogous to those of *In the Matter of Jones* (Rev. Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. In *Jones*, as here, Respondent had intentionally set up a separate legal practice over which Respondent exerted virtually no supervision, delegated control of that practice to a non-lawyer who was compensated from the legal fees charged to the clients, in a grossly negligent manner amounting to moral turpitude. In *Jones*, the court imposed two years of actual suspension.

In contrast to *Jones* is *In the Matter of Steele* (Rev. Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708. Similar facts to those in *Jones* were presented in *Steele*, but resulted in a disbarment recommendation by the Review Department. The distinctions are important, and the *Steele* court expressly noted that “unlike *Jones*..., [Steele] engaged in personal acts of moral turpitude apart from collusion with a

nonattorney[,]” (*Id.* at 724), misappropriation, misrepresentation, and delegation to the non-lawyer of responsibility for signing trust account checks. None of these distinguishing factors are present in this matter.

Respondent’s misconduct herein does involve additional misconduct not present in *Jones*: the instances of taking advanced fees for loan modification services in violation of section 6106.3, and in the non-compliant business transaction with client Santiago in violation of rule 3-300. Accordingly, the discipline herein is greater than that in *Jones*: three years and until all restitution is made to the clients for the full amount of the fees paid to Respondent.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was April 18, 2012.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 18, 2012, the prosecution costs in this matter are \$28, 665. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: Vivian C. San Jose	Case Number(s): 10-O-06759, et al.
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
See Financial Conditions Attachment, pages 18-20		

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than 30 days prior to the expiration of the period of probation.

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

Payee	Principal Amount	Interest Accrues From Paid
Maria Nieto	\$1,500	2/26/10
	\$1,800	3/31/10
Isaias and Teresa Sepulveda	\$1,000	6/19/10
Maribel Jimenez	\$500	5/06/10
	\$1,000	5/20/10
Maudie Molleda	\$250	8/10/10
	\$1,600	9/3/10
	\$1,650	10/3/10
Wilber Cornejo	\$1,000	6/16/10
	\$1,500	7/16/10
Mirtha Godoy	\$750	11/29/10
Sonia Torres	\$1,200	11/5/10
	\$892.50	11/20/10
	\$892.50	12/5/10
Lupe Reynoso	\$500	7/27/10
	\$1,500	8/3/10
	\$1,500	8/10/10
Thomas Carranco	\$1,800	6/15/10
	\$1,700	6/30/10
	\$3,500	7/30/10
Juan Rojas	\$1,333	3/9/11
	\$1,333	4/5/11
	\$1,333	5/6/11
Maria Huitron	\$4,000	3/5/11
	\$3,000	3/10/11
	\$1,495	5/20/11
Ramon and Cristina Zavala	\$3,500	7/17/10
Jose F. Lopez	\$200	1/20/11
	\$1,033	1/22/11
	\$1,333	2/16/2011
	\$1,333	3/20/11

Pedro and Valentin Palacios	\$1,500	10/18/10
	\$1,485	11/10/10
	\$195	1/9/11
Martin Pena	\$2,500	4/1/11
	\$1,500	4/24/11
Pedro and Socorro Cruz	\$2,000	1/26/11
Victor and Maria Lira	\$1,000	2/18/11
	\$1,359	3/3/11
	\$500	3/8/11
Ana Magana	\$2,000	2/26/11
Israel Calderon	\$3,000	3/22/10
	\$2,400	4/22/10
	\$1,600	5/22/10
Eugenio Rios	\$6,250	8/6/10
Maria Barraza	\$1,995	3/23/10
	\$1,300	4/23/10
	\$299	9/15/11
Luz Padilla	\$1,000	3/29/11
	\$1,000	4/15/11
	\$1,000	5/5/11
Gutierrez	\$2,000	2/16/11
Anna Maria Moreno	\$500	1/11/11
	\$500	1/20/11
	\$600	1/28/11
	\$339	6/30/11
Jose Lopez	\$100	6/29/11
	\$1,700	7/29/11
Jose Barrera	\$500	5/13/11
	\$1,039	6/6/11
Oscar Alvarez	\$800	6/7/11
	\$575	7/7/11
	\$675	8/7/11

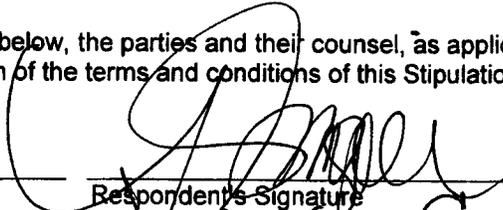
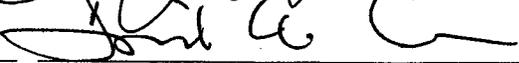
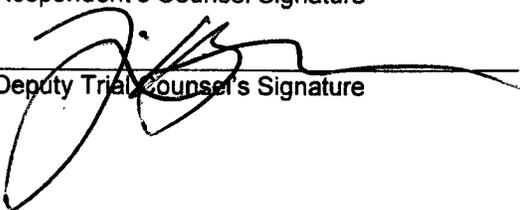
Angel Nanez	\$100	4/22/11
	\$1,900	4/29/11
	\$360	8/8/11
Elizabeth Santibanez	\$200	7/18/11
	\$600	7/23/11
	\$600	7/26/11
	\$359	7/29/11

(Do not write above this line.)

In the Matter of: Vivian C. San Jose	Case number(s): 10-O-06759
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>4/30/12</u> Date	 Respondent's Signature	<u>Vivian C. San Jose</u> Print Name
<u>5/9/12</u> Date	 Respondent's Counsel Signature	<u>David A. Clare</u> Print Name
<u>5.15.12</u> Date	 Deputy Trial Counsel's Signature	<u>Timothy G. Byer</u> Print Name

(Do not write above this line.)

In the Matter of: Vivian C. San Jose	Case Number(s): 10-O-06759
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ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

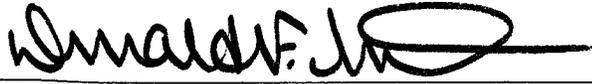
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

On page 5 of the stipulation, the "X" in the box next to paragraph E.(1) is deleted as unnecessary.

On page 19 of the stipulation, the name "Gutierrez" is amended to read "Ericka Gutierrez."

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

5/22/12
Date


DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 22, 2012, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

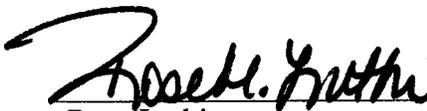
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID ALAN CLARE
DAVID A CLARE, ATTORNEY AT LAW
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

TIMOTHY BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 22, 2012.



Rose Luthi
Case Administrator
State Bar Court